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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/788,514

02/27/2004

Mary Bess Wilson

3835.003

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07/06/2006

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EXAMINER

GROSSO, HARRY A

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 07/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/788,514

Applicant(s)

WILSON, MARY BESS

Examiner

Harry A. Grosso

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2004 and 29 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claim 27 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 27 recites the limitation "the napkins" in line 3. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 7-10, 12, 17, 20-23, 27-30, 32 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Hilderbrand (3,926,361).
3. Regarding claims 1-3, Hilderbrand discloses a container for one food item with a sleeve for holding a predetermined number of napkins (one) (Figure1, column 2, lines 1-5).
4. Regarding claims 7 and 8, Hilderbrand discloses the sleeve has at least one open end.

5. Regarding claims 9 and 10, Hilderbrand discloses an intermediate slit portion through which the napkin end would be capable of extending outside the sleeve.
6. Regarding claim 12, Hilderbrand discloses the sleeve attached to the side of the container.
7. Regarding claim 17, Hilderbrand discloses a generally cylindrical container with the sleeve on the side of the container.
8. Regarding claims 20-23, Hilderbrand discloses a food container and a means for dispensing a food accessory that is a sleeve for a napkin. The sleeve contains one napkin for one food product in the container.
9. Regarding claims 27 and 28, Hilderbrand discloses the dispensing means has one open end.
10. Regarding claims 29 and 30, Hilderbrand discloses an intermediate access portion, slit in the sleeve.
11. Regarding claims 32 and 33, Hilderbrand discloses the food accessory dispenser is cylindrical and the dispenser is on the side of the container.
12. Claims 1-5, 7, 8, 12, 20-25, 27, 28 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Faltynek (4,993,845).
13. Regarding claims 1-3, Faltynek discloses a container for food items with a sleeve for holding napkins (50, Figure 1, column 2, lines 58-60). The number of napkins could be predetermined by the contents of the bag and the sleeve would be capable of holding a predetermined number of napkins.
14. Regarding claims 4 and 5, Faltynek discloses the container is a paper bag.

15. Regarding claims 7 and 8, Faltynek discloses the sleeve has at least one open end.
16. Regarding claim 12, Faltynek discloses the napkins in a face to face relationship with a side of the container.
17. Regarding claims 20-23, Faltynek discloses a container for food items with an accessory dispenser that is a sleeve for holding napkins (50, Figure1, column 2, lines 58-60). The number of napkins could be predetermined by the contents of the bag and the sleeve would be capable of holding a predetermined number of napkins.
18. Regarding claims 24 and 25, Faltynek discloses the container is a paper bag.
19. Regarding claims 27 and 28, Faltynek discloses the dispensing means has one open end.
20. Regarding claim 32, Faltynek discloses the food accessory dispenser is on the side of the container.
21. Claims 1, 2, 4, 6-8, 15, 16, 20, 24 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Fleury et al (3,797,734) (Fleury).
22. Regarding claims 1, 2, 4, 6, 20, 24 and 26, Fleury discloses a plastic bag (Figure 1, column 2, lines 31 and 40-43) capable of holding a food product and having a sleeve or accessory dispenser (28) for a napkin (33, column 4, lines 50-54) and capable of holding a predetermined number of napkins (one, for instance).
23. Regarding claims 7 and 8, Fleury discloses the sleeve has one open end.
24. Regarding claims 15 and 16, Fleury discloses the sleeve is integrally sealed to the bag (column 4, lines 37-45).

25. Claims 1, 2, 7, 8, 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Gonzalez et al (5,540,333) Gonzalez.

26. Regarding claims 1 and 2, Gonzalez disclosed a food container (Figures 1, 3 and 4) with a sleeve (46) capable of holding a predetermined number of napkins.

27. Regarding claims 7 and 8, Gonzalez discloses the sleeve has an open end.

28. Regarding claims 13 and 14, Gonzalez discloses the sleeve is adhesively attached to the container (Figure 3, column 5, lines 29-34).

29. Claims 1, 2, 7, 8, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Gottsegen (3,163,338). Gottsegen discloses a foam container (12, Figures 4 and 5, column 3, lines 7-10) with a food container (28) and sleeves (30, 32) capable of holding a predetermined number of napkins. The sleeves are open at one end and are integrally sealed to the container.

30. Claim 1, 11, 20 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Shveda (3,920,120). Shveda discloses a food container (22A, Figure 2, column 2, lines 40-59) with a sleeve or accessory dispenser (24A) attached at the bottom of the container capable of holding a predetermined number of napkins in a face to face relationship with the bottom of the food container.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-

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4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Nathan Newhouse  
Supervisory Patent Examiner  
Art Unit 3727

hag